



DOUGLAS A. DUCEY
GOVERNOR

STATE OF ARIZONA
OFFICE OF THE GOVERNOR

EXECUTIVE OFFICE

May 1, 2018

The Honorable Michele Reagan
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Reagan:

I am transmitting to you the following bills from the Fifty-third Legislature, 2nd Regular Session, which I signed on May 1, 2018:

SB 1064 insurers; health providers; claim arbitration (Brophy McGee)
SB 1101 captive insurers; licensing (Petersen)

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

House Engrossed Senate Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 273

SENATE BILL 1101

AN ACT

AMENDING SECTIONS 20-1098.01 AND 20-1098.17, ARIZONA REVISED STATUTES;
RELATING TO CAPTIVE INSURERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1098.01, Arizona Revised Statutes, is amended
3 to read:

4 20-1098.01. Licensing; authority

5 A. If allowed by its articles of incorporation, bylaws or other
6 organizational document, an applicant may apply to the director for a
7 license to transact captive insurance, except that:

8 1. A pure captive insurer shall not insure risks other than the
9 risks of its affiliates and controlled unaffiliated business.

10 2. A group captive insurer, other than a risk retention group,
11 shall not insure risks other than the risks of its group members, its
12 affiliates and controlled unaffiliated business. A risk retention group
13 shall insure only the risks of its group members.

14 3. An agency captive insurer shall not:

15 (a) Insure any risks other than those placed by or through its
16 owners.

17 (b) Directly insure life or disability insurance risks WITHOUT THE
18 APPROVAL OF THE DIRECTOR. THE INSURANCE RISKS THAT THE DIRECTOR MAY
19 APPROVE ARE LIMITED TO EMPLOYER GROUP TERM LIFE INSURANCE, EMPLOYER GROUP
20 DISABILITY INCOME INSURANCE AND REIMBURSEMENT OF EMPLOYER HEALTH PLAN
21 DEDUCTIBLES. THE DIRECTOR MAY REQUIRE THE BUSINESS WRITTEN BY AN AGENCY
22 CAPTIVE INSURER TO BE ANY OF THE FOLLOWING:

23 (i) FRONTED BY AN INSURER THAT HOLDS A CERTIFICATE OF AUTHORITY
24 UNDER THE LAWS OF ANY STATE.

25 (ii) REINSURED BY A REINSURER AUTHORIZED, ACCREDITED OR APPROVED BY
26 THE DIRECTOR.

27 (iii) SECURED BY A TRUST FUND IN THE UNITED STATES FOR THE BENEFIT
28 OF POLICYHOLDERS AND CLAIMANTS OR FUNDED BY AN IRREVOCABLE LETTER OF
29 CREDIT OR OTHER ARRANGEMENT THAT IS ACCEPTABLE TO THE DIRECTOR. THE
30 DIRECTOR MAY REQUIRE THE AGENCY CAPTIVE INSURER TO INCREASE THE FUNDING OF
31 ANY SECURITY ARRANGEMENT ESTABLISHED UNDER THIS ITEM. IF THE FORM OF
32 SECURITY IS A LETTER OF CREDIT, THE LETTER OF CREDIT SHALL BE ISSUED OR
33 CONFIRMED BY A BANK APPROVED BY THE DIRECTOR. A TRUST MAINTAINED PURSUANT
34 TO THIS ITEM SHALL BE ESTABLISHED IN A FORM AND ON TERMS APPROVED BY THE
35 DIRECTOR.

36 4. A protected cell captive insurer shall not insure any risks
37 other than those prescribed in its participant contracts.

38 B. The following apply to the transaction of insurance by a captive
39 insurer on a direct basis:

40 1. A captive insurer shall not directly insure any of the following
41 types of insurance business:

42 (a) Hospital service corporations, medical service corporations,
43 dental service corporations, optometric service corporations or hospital,
44 medical, dental and optometric service corporations as defined in section
45 20-822.

(b) Health care services organizations as defined in section 20-1051.

(c) Prepaid dental plan organizations as defined in section 20-1001.

(d) Prepaid legal insurance contracts as defined in section 20-1097.

(e) Business of title insurance as defined in section 20-1562.

(f) Personal motor vehicle or homeowner's insurance coverage or any component of that insurance coverage.

(g) Mortgage guaranty insurance as defined in section 20-1541.

(h) Workers' compensation or employers' liability insurance policies except in connection with a self-insurance program as prescribed in this subsection.

2. A pure captive insurer shall not provide direct coverage of workers' compensation or employers' liability in this state unless the coverage is provided under a self-insurance program that is approved by the industrial commission of Arizona pursuant to section 23-961. A captive insurance program that is authorized by section 23-961 is subject to and shall comply with all requirements of title 23, chapter 6 that are applicable to self-insurance.

3. A pure captive insurer shall not provide direct coverage of workers' compensation or employers' liability insurance in another state unless the coverage is provided under a self-insurance program that is qualified as a self-insurance program under the applicable state or federal law, as determined by the agency or other entity that has jurisdiction over the self-insurance program.

4. AN AGENCY CAPTIVE INSURER DIRECTLY INSURING LIFE OR DISABILITY INCOME INSURANCE RISK AS SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION:

(a) SHALL MARK EACH POLICY AND CERTIFICATE WITH A CONSPICUOUSLY STAMPED OR WRITTEN NOTICE IN BOLD-FACED TYPE THAT STATES THE FOLLOWING:

THIS POLICY IS ISSUED BY AN INSURER THAT IS NOT A MEMBER OF AN ARIZONA INSURANCE GUARANTY FUND. IF THE INSURER THAT ISSUED THIS POLICY BECOMES INSOLVENT, INSURED OR CLAIMANTS WILL NOT BE ELIGIBLE FOR INSURANCE GUARANTY FUND PROTECTION PURSUANT TO TITLE 20, ARIZONA REVISED STATUTES.

(b) MAY INSURE ONLY LIFE AND DISABILITY INCOME INSURANCE RISKS AS SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION FOR EMPLOYERS THAT MAINTAIN THEIR PRINCIPAL PLACE OF BUSINESS WITHIN THIS STATE.

(c) MAY NOT BE OWNED OR CONTROLLED BY AN INSURER THAT IS GRANTED AUTHORITY BY THE DIRECTOR TO TRANSACT INSURANCE IN THIS STATE.

(d) SHALL HAVE ITS FINANCIAL STATEMENTS AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT PURSUANT TO SECTION 20-1098.07, SUBSECTION B.

1 (e) MAY NOT DIRECTLY INSURE LIFE OR DISABILITY INCOME INSURANCE
2 RISKS AS SPECIFIED IN SUBSECTION A, PARAGRAPH 3 OF THIS SECTION IN THIS
3 STATE UNLESS ALL OF THE FOLLOWING APPLY:

4 (i) AN INSURANCE PRODUCER OR MANAGING GENERAL AGENT THAT OWNS THE
5 AGENCY CAPTIVE INSURER REMAINS IN REGULATORY GOOD STANDING IN ALL STATES
6 IN WHICH IT IS LICENSED.

7 (ii) THE AGENCY CAPTIVE INSURER INSURES ONLY THE RISKS OF EMPLOYER
8 GROUP TERM LIFE INSURANCE, EMPLOYER GROUP DISABILITY INCOME INSURANCE AND
9 REIMBURSEMENT OF EMPLOYER HEALTH PLAN DEDUCTIBLES THAT ARE PLACED BY OR
10 THROUGH AN INSURANCE PRODUCER OR MANAGING GENERAL AGENT THAT OWNS THE
11 AGENCY CAPTIVE INSURER AND, IF REQUIRED BY THE DIRECTOR, PROVIDES THE
12 DIRECTOR THE FORM OF SUCH POLICIES.

13 (iii) THE AGENCY CAPTIVE INSURER DISCLOSES TO THE ORIGINAL
14 POLICYHOLDER OR POLICYHOLDERS, IN A FORM OR MANNER APPROVED BY THE
15 DIRECTOR, ALL LIMITATIONS, RIGHTS AND OBLIGATIONS HELD BY THE AGENCY
16 CAPTIVE INSURER AS A RESULT OF ITS AFFILIATION WITH AN INSURANCE PRODUCER
17 OR MANAGING GENERAL AGENT.

18 ~~4.~~ 5. This subsection does not prohibit a captive insurer from
19 directly insuring deductible reimbursement risk.

20 ~~5.~~ 6. This subsection does not prohibit a captive insurer from
21 directly insuring employment practices liability risk.

22 C. A captive insurer shall not accept or cede reinsurance except as
23 provided in section 20-1098.11.

24 D. A captive insurer that writes life insurance or disability
25 insurance shall comply with all applicable state and federal laws.

26 E. A captive insurer shall:

27 1. Hold at least one meeting of its board of directors or, for
28 reciprocal insurers, its subscribers' advisory committee each year in this
29 state.

30 2. Maintain its principal place of business in this state.

31 3. Appoint a resident statutory agent to accept service of process
32 and to otherwise act on its behalf in this state and shall file the
33 appointment with the director. In the case of a captive insurer formed as
34 a corporation or reciprocal insurer, if the statutory agent cannot with
35 reasonable diligence be found at the registered office of the captive
36 insurer, the director is an agent of the captive insurer on whom any
37 process, notice or demand may be served.

38 F. Before receiving a license, an applicant for a captive insurer
39 license shall file with the director the following:

40 1. If formed as a corporation, a certified copy of its articles of
41 incorporation, articles of organization or other organizational document,
42 a copy of its duly adopted bylaws or other governance rules, a statement
43 under oath of its president and secretary showing its financial condition
44 and any other statement or document required by the director.

1 2. If formed as a reciprocal insurer, a copy of the power of
2 attorney of its attorney-in-fact, a copy of its subscribers' agreement, a
3 copy of its duly adopted bylaws or other governance rules, a statement
4 under oath of its attorney-in-fact showing its financial condition and any
5 other statement or document required by the director.

6 G. In addition to the information required by subsection F of this
7 section, each applicant for a captive insurer license shall file with the
8 director evidence of all of the following:

9 1. The amount and liquidity of its assets relative to the risks to
10 be assumed.

11 2. The adequacy of the expertise, experience and character of the
12 directors and officers of the captive insurer.

13 3. The overall soundness of its plan of operation.

14 4. The adequacy of the loss prevention programs of its insureds.

15 5. The engagement of a competent manager that does business at a
16 location in this state.

17 6. The establishment of business relationships with any
18 accountants, banks, attorneys and other professionals that are acceptable
19 to the department.

20 7. The ability of the captive insurer's owners or members to pay
21 claims to third parties if the captive insurer is unable to pay those
22 claims.

23 8. Other factors deemed relevant by the director in ascertaining
24 whether the proposed captive insurer will be able to meet its policy
25 obligations.

26 H. In addition to the information required by subsections F and G
27 of this section, if the applicant is seeking authority as a protected cell
28 captive insurer, the applicant shall file:

29 1. A business plan that demonstrates, in a manner acceptable to the
30 director, how the applicant will account for the loss and expense
31 experience of each protected cell and report that information to the
32 director.

33 2. A statement acknowledging that all financial records of the
34 protected cell captive insurer, including records pertaining to protected
35 cells, shall be available for inspection or examination by the director or
36 the director's designee.

37 3. Its form for all participant contracts.

38 4. Evidence that the protected cell captive insurer will allocate
39 expenses fairly and equitably to each protected cell.

40 I. Before the issuance of a license, an applicant shall promptly
41 notify the director of any material change in the information filed
42 pursuant to this section.

43 J. An applicant for a captive insurer license shall pay to the
44 director a nonrefundable fee for the issuance of a captive insurance
45 license pursuant to section 20-167. The captive insurer shall pay the

1 license renewal fee pursuant to section 20-167 when the captive insurer
2 files the annual report prescribed in section 20-1098.07.

3 K. If the director is satisfied that the documents and statements
4 that the applicant has filed comply with this article, the director may
5 grant the applicant a captive insurer license that authorizes the captive
6 insurer to transact captive insurance business in this state.

7 L. The director shall approve or deny an application for a license
8 to transact captive insurance business within thirty days after the
9 director deems the application complete.

10 Sec. 2. Section 20-1098.17, Arizona Revised Statutes, is amended to
11 read:

12 20-1098.17. Effect of fees payment; premium tax

13 A. The fees paid by a captive insurer pursuant to section 20-167,
14 subsection ~~H~~ G are payment in full and in lieu of all other demands for
15 all state, county, district, municipal and school taxes, licenses and
16 excises of whatever kind or character, except for:

17 1. A tax on real and tangible personal property that is located
18 within this state.

19 2. The transaction privilege tax and the use tax that is imposed
20 pursuant to title 42, chapter 5, articles 1 and 4.

21 3. The transaction privilege tax and use tax that is imposed by any
22 county, city or town.

23 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, AN AGENCY CAPTIVE
24 INSURER THAT INSURES RISKS ON POLICIES AS SPECIFIED IN SECTION 20-1098.01,
25 SUBSECTION A, PARAGRAPH 3, SUBDIVISION (b) SHALL PAY THE PREMIUM TAX
26 PRESCRIBED IN SECTION 20-224 FOR SUCH POLICIES THAT IS IN EXCESS OF ANY
27 FEES PAID PURSUANT TO SECTION 20-167.

APPROVED BY THE GOVERNOR MAY 1, 2018

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2018

Passed the House April 18, 20 18,

Passed the Senate February 8, 20 18,

by the following vote: 34 Ayes,

by the following vote: 18 Ayes,

26 Nays, 0 Not Voting

12 Nays, 0 Not Voting

Mr. [Signature]
Speaker of the House
Pro Tempore

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1101

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

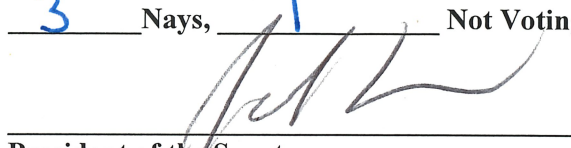
Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

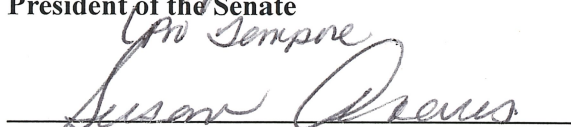
Passed the Senate April 25, 2018

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

25th day of April, 2018

at 11:18 o'clock A. M.

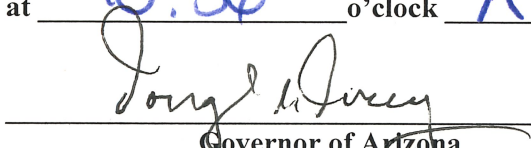


Secretary to the Governor

Approved this 1st day of

May 2018

at 10:36 o'clock A M.



Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 1 day of May, 2018

at 3:55 o'clock P. M.



Secretary of State

S.B. 1101